

Legal/legislative environment - summary

Class Action Litigation	Who	Issue	Next Step(s)/Implications
Class Action Litigation	Castano	Alleges nicotine addiction	<p>On 2/17/95, Judge Jones issued his ruling partially granting plaintiffs' request for class certification on the following liability issues: fraud, breach of warranty (express or implied), intentional tort, negligence, strict liability, consumer protection and punitive damages. The issues which Judge Jones ruled were not appropriate for class certification were: injury-in-fact, proximate cause, reliance, affirmative defenses, compensatory damages and medical monitoring.</p> <p>On March 8, 1995, defendants filed a motion, for certification of an interlocutory appeal. Also on 3/8/95, plaintiffs submitted their proposed plan for publication of the class notice in over 800 magazines and newspapers and the creation of a 900 telephone number. On 3/9/95, defendants requested that the court stay consideration of plaintiffs' notice plan until the court rules on defendant's motion requesting an appeal. On 3/20/95, defendants filed a supplemental brief in support of their motion for certification of appeal based on Judge Posner's ruling in the Wadleigh case in the Seventh Circuit Court of Appeals.</p>
	Engle	Alleges nicotine addiction	<p>On 12/14/94, defendants filed their brief in support of their appeal to the Florida Third District Court of Appeal of the 10/31/94 order granting plaintiffs' motion for class certification. On 1/2/95, the Florida Court of Appeal denied defendants' motion seeking certification of the October order to the Florida Supreme Court. On 3/27/95, plaintiffs filed their brief in opposition to defendants' appeal of the class certification order.</p>
	Broin	Flight attendants' ETS claims	<p>On 1/11/95, defendants noticed their appeal of Judge Kaye's 12/12/94 order granting class certification. Defendants' brief in support of their appeal was filed on 3/28/95. On 1/9/95, plaintiffs filed their brief in opposition to defendants' appeal to the Florida Supreme Court from the 3/15/94 decision of the Florida Court of Appeals that reinstated plaintiffs' class action allegations. There have been no new developments on this appeal.</p>

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Court Cases	Rogers	Smoking and Health	<p>Opening statements were presented by both sides on 2/2/95. Thereafter, plaintiff presented her case-in-chief. On 2/14/95, Judge Johnson entered judgment in favor of defendants and against plaintiff on plaintiff's claim for punitive damages, ruling that plaintiff had not submitted sufficient proof to establish her claim. On 2/15/95, plaintiff rested her case. Defendants then proceeded to offer their defense on 2/15-2/16 and rested their case at the close of the day on 2/16/95. On 2/21/95, closing statements were presented by both sides and the jury was given the case at approximately 2:00pm and deliberated until 4:30am. The jury returned at 11:30am on 2/22/95 and continued deliberations through 6:45pm at which time the jury advised they were at an impasse and Judge Johnson declared a mistrial. There have been no new developments on this matter.</p>
	PM-ABC	Libel	<p>On 1/26/95, Judge Markow granted PM's motion to compel ABC to disclose the identities of its "confidential sources" and denied ABC's motion to quash subpoenas filed by PM against non-parties allowing PM to obtain identifying information in the hands of those non-parties. On 1/30/95, in response to ABC's emergency application, Judge Markow stayed his 1/26/95 order pending the submission of additional briefing documents by all parties. A hearing on the matter was held on 3/1/95, Judge Markow reserved decision on the confidential source issue. ABC has been making ex-parte contacts with former employees of PM. PM made a motion for protective order which the Judge took under advisement. There will be a hearing scheduled on this issue during the week of 4/3/95.</p>
	Ramsey-Buckingham	ETS	<p>Plaintiff alleges she has lung cancer as a result of her exposure to environmental tobacco smoke. Plaintiff has filed a motion asking the court to convene trial prior to 9/5/95 due to her purported ill-health. On 2/9/95, the court entered a scheduling order that rejected plaintiffs request for an expedited schedule. On 2/17/95, defendants filed a motion to dismiss based on plaintiff's failure to state a claim. On 3/13/95, plaintiff filed her opposition to the motion to dismiss. On 3/20/95, defendants filed a motion for leave to file a reply to plaintiff's opposition brief and a request for oral argument. The court granted the motion, however, no date was set for the oral argument.</p>

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Area	Agency	Issue/Risk	Next Steps/Implications
Smoking Restrictions	OSHA	US workplace smoking restrictions	Hearings began 9/20. The focus of testimony now through March 9 will be on the impact of the proposal on businesses. RJR testified January 17 - 19; Steve Bayard of the EPA did not testify as scheduled.
State Medicaid Bill	Massachusetts	A medicaid bill (Florida-type) was introduced in Massachusetts.	The bill would authorize the, Attorney General to bring suit against cigarette manufacturers, and to retain the services of private counsel. It would take away the defenses of assumption risk, comparative and contributory negligence.
State Medicaid Suits	Florida	Medicaid Suit	<p>On February 21, Florida filed suit under a law passed last year that allows it to go after third parties which are thought to be responsible for increased Medicaid costs. The lawsuit is based on an unconstitutional statute that was passed through the legislature in an unconstitutional manner, and is being brought by an illegal, independent agency. The law passed last year is a blatant attempt by the trial bar to ensure a multitude of future big-dollar suits against Florida businesses. The Medicaid Act attempts to stack the deck in favor of the State against anyone it chooses to sue under the statute, including for example the alcohol industry.</p> <p>Philip Morris and RJ Reynolds Tobacco Company filed a petition with the Florida Supreme Court asking the Court to bar the Agency for Health Care Administration and the Department of Business and Professional Regulation from filing or maintaining the lawsuit.</p> <p>In January, two bills were introduced in the Florida House and Senate to repeal this statute. On March 28, 1995, the Florida Senate Commerce Committee voted in favor of repealing the Florida statute.</p>

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Mississippi Medicaid Suit

Last May, the Mississippi Attorney General filed suit in chancery court, alleging that the tobacco companies should reimburse the state for Medicaid costs attributed to those who allegedly suffer from smoking related illnesses. The tobacco companies moved to dismiss that complaint and alternatively moved to transfer the lawsuit to circuit court, where the case could be tried by a jury. On February 21, Chancellor William Meyers, in a one page order, denied the defendants' motions and granted the plaintiff's motion to strike certain affirmative defenses. The defendants are considering whether to seek a clarification of the court's order and/or leave for an immediate appeal. There have been no new developments on this matter.

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Bill Filed to Repeal Florida Law

In the Florida 1995 Legislature, a bill has been filed that would repeal last year's law that allowed Florida to sue tobacco companies.

Gunsmoke Marketing

A U.S. District Court in New York judge granted a temporary injunction that prevents the marketing of Gunsmoke brand cigarettes, a discount product manufactured by Star Tobacco. Philip Morris filed a suit in January alleging that Star Tobacco infringes on the Marlboro trademarks by copying the "Marlboro Country American West" theme. In the lawsuit, Scott Feit, Star Tobacco's marketing vice president was identified as a former Philip Morris employee. The injunction is conditional to PM posting a \$5 million bond. Star Tobacco plans to appeal the decision.

Another Infringement on Marlboro Trademark

Bailey's cigarettes, which is an S&M Brands product, came in a pack that featured a red chevron thereby infringing on the Marlboro trademark and POSM graphics. When challenged by Philip Morris, S&M Brands immediately revamped the packaging graphics for its Bailey's brand.

State Tax Increase in South Dakota

The South Dakota Legislature passed a bill to increase the state cigarette tax from 10¢ to 33¢ per pack. The governor is expected to sign the bill, which also imposes a 10% state tax on the wholesale price of chewing tobacco, snuff, cigars, and pipe tobacco. The tax revenues are to be used toward reducing property taxes.

Smoking Ban in Maryland

Legislation was passed in Maryland to ban smoking in nearly all indoor workplaces in the state. The ban, which went into effect March 28, applies to factories, stores, prisons, colleges, and company cars occupied by two or more people. State legislators agreed on a compromise that exempts taverns, hotel and motel rooms, and with certain restrictions, restaurants.

Oregon Considers Smoking Bans to Aid Minors

Lawmakers in Oregon are considering some type of smoking ban for public places that are frequented by minors. They are also considering measures such as suspending driving privileges of minors caught with tobacco.

Patents for Smoking Cessations Products

DynaGen Inc. says it has been awarded two US patents related to its non-nicotine smoking cessation products. One product is the NicErase-SL sublingual tablet formulation of L-lobeline sulfate. The other is an implantable polymer-based formulation of lobeline for once-a-week therapy.

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Accommodating Smokers and Non-Smokers

With the Smoke-Free Air Act going into effect on April 10 in New York, The Accommodation Program issued a report outlining the places where smoking is still permitted under the new law. That list is shown below:

- Restaurants with an indoor seating capacity of up to 35 patrons in the dining area are exempt from the new law.
- In restaurants with an indoor seating capacity of more than 35 patrons in the dining area, smoking is permitted in either the bar area or in a smoking lounge at which only beverages are offered. Up to 25% of the outdoor seating areas can be smoking.
- Bars and cabarets are exempt from the law if food sales are less than 40% of gross annual sales.
- Hotel and motel lobbies and rooms are exempt from the law.
- Hired private limousines are exempt from the law.
- Smoking is permitted in up to half of the concourse area of a bowling center, provided the perimeter of the smoking area is at least six feet from the settee area.
- Private events in enclosed rooms are exempt when seating arrangements are under the control of the sponsor.
- Billiard parlors and bingo games (except in child day care centers and in secondary and pre-secondary schools) are exempt from the law.

INTERNATIONAL TOBACCO NEWS

Bidders on Swedish Match

UK and US financial groups are expected to dominate the list of bidders on the estimated \$1.59 billion sale of Swedish Match by Volvo. Several big international groups have expressed interest or been the center of speculation, such as Nestle (the Swiss food company), Philip Morris, and BAT Industries. Insiders think that Swedish Match will be sold to financial investors rather than to one of the big names which already has strong positions in the market.

According to sources, including Reuters Ltd., Scandinavian Tobacco (Denmark, the makers of Prince cigarettes) is interested in acquiring Swedish Match (Swedish Tobacco Co.). To prevent the Danish cigarette manufacturer from acquiring their company, Swedish Tobacco is considering a leveraged buyout. RJR has also been mentioned as a possible buyer of Swedish Match.

Japan Tobacco's Export to the US

The Japan Export/Import Monthly Report showed Japan Tobacco's annual export volume to the US as follows:

<u>CY</u>	<u>Units in Millions</u>
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1990	180.2
1991	202.4
1992	189.6
1993	263.5
1994	284.7

Although these figures do not include shipment volume from JT's UK factory (Manchester Tobacco), they are reasonably accurate since most of UK shipments are for Asia.

BAT Pressures ITC Chairman

BAT Industries PLC rejected a proposal by its affiliate ITC Ltd. to expand into power generation. As part of a campaign to eject ITC chairman Krishan Lal Chugh, BAT opposed the affiliate's plan to enter India's energy sector. BAT said it was not ready to sanction large sums of money to build power stations because of financial irregularities during Chugh's period as chief executive. BAT was unsuccessful in its demand that Chugh resign, but was able to gain support for a probe into ITC's finances. Chugh says BAT, which currently controls 31.67% of ITC's shares, wants to acquire a 51% stake in ITC.

BAT to Produce Cigarettes in Cuba

A protocol to produce cigarettes has been signed between Cuba and Souza Cruz, a Brazilian subsidiary of BAT Industries PLC. Souza Cruz will enter into a joint venture with a state-owned company splitting the profit 50-50. According to the agreement, Cuba will provide the factory, equipment, tobacco and the workforce. Souza Cruz will provide new equipment, spare parts, and cigarette paper. The deal should be finalized in April.

Hanson Splits

Hanson has announced that it will "demerge" 34 businesses to create U.S. Industries Inc. The new company will be headed by David Clarke, CEO of what was known as Hanson's American operations. The deal will allow Hanson to return to the acquisition trail by reducing the company's debt by one third, to \$2.5 billion.

Restructuring the Market in China

China's State Tobacco Monopoly Bureau proposed merging or closing 100 state-owned factories which are not profitable. The Tobacco Merchants Association reports that those factories which are making money would be merged into "efficient production groups" to improve the structure of cigarette production. The change would better utilize raw materials and reallocate technology.

Star Light Has New Filter

TR Magazine reported in the February 1995 issue that Star Light brand was recently relaunched in Sweden "with an even more efficient Curzel Filter." The House of Blend affiliate of Svenska says it has given the filter two sections—the usual acetate section and now a carbon filter section. The R&D department at House of Blend say Star Light has a "full tobacco flavor, despite cleaner smoke."

Mail Order Program in the UK

In the United Kingdom, a cigarette brand called Death is now available by mail order for a

pound less than the recommended retail prices. Enlightened Tobacco Company has increased its marketing budget to £1 million to promote its 14-day delivery service and advertising to young adult smokers.

Class Action Suit in Canada

A class action suit has been filed against Rothmans, Benson & Hedges Inc. (RBH) by three plaintiffs alleging they have sustained damages arising out of the use of tobacco products. RBH, which is a 60%:40% joint venture between Rothmans Inc. and Philip Morris, reported that each plaintiff is claiming damages in the amount of C\$1 million punitive damages and an order requiring funding of rehabilitation centers. RBH intends to vigorously defend the action.

Price Hike in Canada

Industry analysts expect Imasco Ltd. (Imperial Tobacco Ltd.) , who makes about 65% of Canada's cigarettes, to raise prices by this summer. The excise tax recently increased by C\$0.60 per carton of 200 cigarettes. Smuggling is considered to be less of a threat by Canadian Finance Minister Paul Martin because smuggling networks have been closed down. The price increase by Imasco is expected to be 3% to 5% which would add at least C\$40 million to the company's 12-month sales.

Cigarette Sales Declining in Mexico

The Richmond Times reported that cigarette sales are on the decline in Mexico. Matias Gomez Barreto of Cigarros La Tabacalera Mexicana attributes the decline to three factors:

- Reduced consumer buying power due to slow economy in 1994.
- National campaign by federal health officials to eliminate smoking.
- Contraband cigarettes

Tobacco companies in Mexico are trying to form a tobacco association that would represent their interests because they feel that declining consumption is not a short term problem. There are mixed expectations about the effects NAFTA will have on tobacco sales, as tariffs drop from 40% to 0% by the year 2000.

Possible Purchase of Nicoderm Manufacturer

The New York Times reported that US drug maker Marion Merrell Dow Inc. is under consideration for purchase by German chemical conglomerate Hoechst AG. Marion is the manufacturer of Nicoderm, a smoking cessation product. As the second largest drug company in Europe, Hoechst is trying to enter the American pharmaceutical market by purchasing all the outstanding stock of Marion Merrell Dow. The possible purchase is valued at about \$7.2 billion.

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